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14 ROWLAND MARCUS ANDRADE

15
16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **SAN FRANCISCO DIVISION**

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 v.

22 ROWLAND MARCUS ANDRADE,

23 Defendant.

Case No. 3:2-cr-00249-RS-LBx

**DECLARATION OF KERRIE C. DENT IN
SUPPORT OF DEFENDANT ROWLAND
MARCUS ANDRADE'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF EX
PARTE MOTION TO COMPEL
GOVERNMENT TO DISCLOSE
ATTORNEY INFORMATION AND TO
REFRAIN FROM RETURNING
ALEXANDER LEVIN'S DEVICES UNTIL
SUBPOENA IS SERVED**

Judge: Hon. Laurel Beeler

Hearing: December 14, 2023, 9:30 a.m.

1 Kerrie C. Dent, counsel for Defendant Marcus Andrade, states as follows:

2 1. I am one of the lawyers representing Defendant Marcus Andrade in the above-
3 captioned matter. I have personal knowledge of the discovery disputes and related
4 correspondence between the government and defense counsel and, if called as a witness in this
5 matter, could competently testify to the matters stated in this Declaration.

6
7 2. On November 28, 2022, Mr. Andrade filed a Motion to Compel seeking, among
8 other things, Mr. Levin's devices. Following two rounds of briefing and two arguments, the
9 Court ruled on April 7, 2023, that the government must produce Alexander Levin's devices. The
10 government did not respond by producing the devices, but rather waited six weeks and then
11 produced four spreadsheets of "extractions" from Mr. Levin's phone, making an argument – not
12 made in any of the briefs or arguments before the Court's ruling – that it did not lawfully
13 possess the entire phone. Many messages on the spreadsheets were redacted without explanation
14 and others referenced attachments that were neither visible nor accessible through links.

15
16 3. On November 2, 2023, following a hearing, the Court ruled that the government
17 should provide an update no later than November 9 on whether Levin's devices have been
18 returned to Levin and, if not, whether it objects to doing so. After the hearing, I emailed the
19 government and requested that the government inform me as soon as it learns whether the
20 Southern District of New York or the FBI still had Levin's devices, and, if so, whether they
21 planned to return them to Levin. I requested that, in the event the government has any devices
22 and will return them, it should notify us in advance of when, to whom, and where any device was
23 going to be returned to permit time to serve a subpoena for the returned device(s). The
24 government did not respond to my email.

25 4. Responding to the Court's November 2, 2023 Order, on November 9, 2023, the
26 government reported to the Court that (1) more than a year ago prosecutors in the Southern
27 District of New York had asked Levin's counsel where counsel wanted Levin's devices to be
28

1 sent, but Levin's counsel never responded and (2) in November 2023, Levin's counsel asked the
2 FBI to mail Levin's devices to defense counsel's office, "which FBI-New York has done or
3 intends to do shortly." Dkt. #237. Like the government's failure to respond to my request after
4 the November 2 hearing, the government's November 9 response to the Court did not address
5 our proposal that the government return the phone "with advance notice to us so that we can
6 serve a subpoena for it on Mr. Levin or his counsel before the phone is returned." We therefore
7 filed the motion now before the Court, asking for an order mandating that the government
8 disclose contact information for Levin's lawyer and refrain from returning Levin's devices until
9 we have time to serve Levin or his lawyer with a subpoena for the devices.

11 5. On November 22, 2023, the government emailed me the name and address of a
12 lawyer in New York City, who, it said, was representing Levin. Although I reached out to the
13 lawyer immediately and asked him if he would accept service of a subpoena for Levin's devices,
14 he responded that he was "not sure" what the matter was about and that, because it was the day
15 before Thanksgiving, he wanted to wait until the following week to have a call.

16 6. I emailed the prosecutors on November 22 to remind them of my November 2
17 request that Levin's devices not be returned to Levin or Levin's counsel without an opportunity
18 for us to serve a subpoena for the devices. Again, the government did not respond.

19 7. On November 29, the lawyer whose information was provided by the government
20 informed us that he does not represent Levin and does not have Levin's devices. I promptly
21 reminded the government of our request that it not return Levin's devices to Levin or his counsel
22 until we have had an opportunity to serve a subpoena. Again, the government did not respond.

24 I declare under penalty of perjury that the foregoing is true and correct, and that this
25 declaration was executed on December 3, 2023 in Washington, District of Columbia.

27 /s/ Kerrie C. Dent

28 KERRIE C. DENT